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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962

No. [redacted] 105

DAGMAR READEY, HIRAM SCHMEDEL, CHRIS J. MUCKERMAN, HENRY J. JOHNSON, ROBERT BURKHAM, MIGNON E. DIETRICH and JACK WELCH, JR.,
Appellants,

vs.

ST. LOUIS COUNTY WATER COMPANY, a Corporation, and THOMAS C. DUNNE, MAURICE M. ABRAMSON, JOHN J. DOWLING, RICHARD A. HETLAGE, RUSSELL A. GRANTHAM, GEORGE E. BOHRER, JOHN F. MOLLOY, Members of the County Council of the County of St. Louis, Missouri; EDWARD A. WALSH, County Clerk of St. Louis County, Missouri and DR. C. HOWE ELLER, Acting Health Commissioner of the County of St. Louis, Missouri; and SUCCESSORS IN OFFICE,
Appellees.

Appeal from the Supreme Court of Missouri.

STATEMENT AS TO JURISDICTION.

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Appellees.

Appeal from the Supreme Court of Missouri.

STATEMENT AS TO JURISDICTION.

OPINIONS BELOW.

1. (a) The opinion of the Supreme Court of the State of Missouri has not yet been officially reported, but appears in 352 Southwestern Reporter 2nd Advance Sheet.

p. 622. A copy of the opinion of the Supreme Court of Missouri is attached hereto as Appendix A (p. 31). A copy of the trial Court's opinion (Circuit Court of St. Louis County, Missouri) is annexed hereto as Appendix B (p. 53).

(b) STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The Nature of the Proceedings in the Statute Pursuant to Which It Is Brought.

Appellants are challenging the validity and constitutionality of Ordinance No. 01480 passed by the County Council of St. Louis County, Missouri, on the 27th day of May, 1959, vetoed by the Supervisor of St. Louis County, James H. J. McNary, and thereafter approved by the said County Council on June 3, 1959, overriding the veto.

(Said ordinance is set out in plaintiff's petition, Rec. pages 2, 3, 4; also see Appendix D hereto attached p. 67).

Suit was brought in the Circuit Court of St. Louis County to enjoin the enforcement of the ordinance (Rec. 1-13). The trial Court found in favor of plaintiffs (Appendix B, p. 53; Rec. 739-754; 760-775; 780-792).

Plaintiffs are residents, citizens, taxpayers, and qualified voters of St. Louis County, some of whom reside in incorporated areas, all of whom use the communal water supply of St. Louis County. Defendants appealed to the Supreme Court of Missouri (Division 1) which court rendered a decision upholding the validity of the Ordinance (Appendix A, p. 31). (Mandate reversing trial Court's decision set out Appendix A-1, p. 52.)

Appellants contend that the said ordinance is repugnant to the Constitution of the United States, and more particularly Section I of the 14th Amendment (See Plaintiff's petition, Rec. 6; and Appendix E, p. 69), and the First

Amendment to the Constitution of the United States. The decision of the highest court of the State of Missouri was in favor of the validity of said ordinance.

The decision of the Missouri Supreme Court is also violative of Article I, Section 10 of the Constitution of the State of Missouri pleaded (Rec. 6), which provides:

> "**Section 10. Due process of law.**—That no person shall be deprived of life, liberty or property without due process of law;"

and Article VI, Section 18 (c) of the Constitution of the State of Missouri (pleaded Rec. 7; and also see Appendix F, p. 70); also Article III, Section 22, sub-sections 19, 20 and 24 of the Home Rule Charter for St. Louis County, Missouri (pleaded Rec. 5; also see Appendix G, p. 71), as well as certain Missouri statutes, herewith set out as appendices, it being claimed that the violation of these Missouri constitutional and statutory provisions deprives these plaintiffs of due process of law, and equal protection of the law under the 14th Amendment to the Constitution of the United States.

It is also contended that Section 1983 of 42 U. S. C. A., R. S. 1979 (Civil Action for Deprivation of Rights), is violated by the said decision, and is covered by Section 1 of the said 14th Amendment (See Appendix H for Section 1983, p. 72).

Date of the Judgment or Decree Sought to Be Reviewed and the Time of Its Entry, the Date of the Order Respecting a Rehearing, the Order Overruling the Motion for a Rehearing or to Transfer the Cause to the Court En Banc, the Date the Notice of Appeal Was Filed, and the Court in Which It Was Filed.

This is an appeal from a decision of the Supreme Court of the State of Missouri, Division 1, which court handed down its opinion, in Cause No. 48,453, on December 11,

1961. A motion for rehearing, or to transfer to the court en banc was filed by these appellants on December 23, 1961 (Rec. 816), within the time allowed by the rules of the Supreme Court of Missouri, and the order denying the same was handed down and entered on January 8, 1962 (Rec. 825; also see Appendix C, p. 66) and thereupon became a final judgment of the Supreme Court of Missouri, with no further right of appeal in Missouri. The notice of appeal was filed on March 28, 1962, in the Missouri Supreme Court (Rec. 826).

THE STATUTORY PROVISION BELIEVED TO CONFER ON THIS COURT JURISDICTION OF THE APPEAL.

Jurisdiction of this court on appeal is conferred by 28 U. S. C. A., Section 1257, Paragraph 2.

Cases Believed to Sustain the Jurisdiction of This Court on Appeal

(a) An ordinance is within the purview or category of a state statute within the meaning of 28 U. S. C. A., Sec. 1257, paragraph 2.

Smith v. California, 361 U. S. 147, 80 S. Ct. 215, 4 L. E. 2d 205;

Zucht v. King, 260 U. S. 174, 43 S. Ct. 24, 67 L. E. 194;

Jamison v. Texas, 318 U. S. 412, 63 S. Ct. 679, 87 L. E. 868.

(b) On the question of accepting compulsory fluoridation of drinking water in a public water system:

Jacobsen v. Massachusetts, 197 U. S. 11, 25 S. Ct. 358, 49 L. E. 643;

Shelton v. Tucker, 364 U. S. 479, 81 S. Ct. 247; 5 L. E. 2d 231;

West Virginia State Board of Education v. Barnette, 319 U. S. 624, 63 S. Ct. 1178, 87 L. E. 1628.

(c) On the question of enacting Ordinance No. 01480 by the County Council of St. Louis County, Missouri, **without a vote of the electors.**

Charles W. Baker et al. v. Joe C. Carr, opinion announced March 26, 1962, by United States Supreme Court;

Monroe v. Pape, 365 U. S. 167, l. c. 183, 81 S. Ct. 473, 5 L. Ed. 2nd 492;

Scholle v. Hare decided by the United States Supreme Court April 23, 1962.

(d) On the question of criteria or standards for the amount of fluoride to be used in the drinking water:

Saia v. New York, 334 U. S. 558, l. c. 560, 68 S. Ct. 1148, 92 L. E. 1574;

Kunz v. New York, 340 U. S. 290, l. c. 294, 71 S. Ct. 312, 95 L. E. 280;

Connelly v. General Construction Co., 269 U. S. 385, 46 S. Ct. 126, 70 L. E. 322;

Small v. American Sugar Refining Co., 267 U. S. 233, 45 S. Ct. 295, 69 L. E. 589;

Niemotko v. Maryland, 340 U. S. 268, 71 S. Ct. 325, 95 L. E. 267;

Hague et al. v. C. I. O., 307 U. S. 496, 59 S. Ct. 954, 83 L. Ed. 1423.

The Statute Involved.

Ordinance No. 01480 of the County Council of St. Louis County, Missouri, was passed by the said County Council May 27, 1959. The said Ordinance No. 01480 is filed in a folder by ordinance number, in the Office of the County Clerk of St. Louis County; presently there are no volume numbers or page numbers (Pleaded Rec. 2, 3, 4, also see Appendix D. p. 67).

(c) QUESTIONS PRESENTED BY THIS APPEAL.

(1) Can the County Council of St. Louis County, which is the legislative body of the county, pass an ordinance fluoridating the water of the communal water supply in incorporated areas without a vote of the people, where there is no other practical source of water supply, and where:

(a) The charter provision of the county governing matters of public health requires a vote of the electors, either to enact such legislation or to repeal it, in **incorporated** areas? **Article III, County Council, Sec. 22 (sub-sections 19, 20 and 24) of Home Rule Charter for St. Louis County, Missouri** (Pleaded Rec. 5; also see Appendix G, p. 71).

(b) Where there is a state constitutional provision making legislation regarding public health in counties having **special charters** such as St. Louis County, which at the time of the enactment of the charter had over 400,000 population, subject to the acceptance by vote of a majority of the qualified electors in any municipality or subdivision, which acceptance may be revoked by like vote, thereby limiting the Council's authority in the incorporated cities. **Article VI, Section 18 (c), of the Constitution of the State of Missouri** (which is quoted in the Findings of Fact and Conclusions of Law of the Trial Court (Rec. 768, Rec. 786); also quoted in the Second Amended Petition (Rec. 7), and also, for the Court's convenience, set out in Appendix F, p. 70, hereto attached).

(c) Where there is a state statute making it a criminal offense to put any fluoride in any non-alcoholic drink, which includes water? **Sections 196.125-196.145, R. S. Mo. 1959 (same sections in R. S. Mo. 1949).** (Pleaded Rec. 8; also, see Appendix I, p. 73, hereto attached, for full text of Sec. 196.125; Sec. 196.135; and Sec. 196.145.)

(2) Is not such action on the part of the legislative body (that is, the County Council), both Arbitrary and oppressive, and in direct violation of Section I of the 14th Amendment to the United States Constitution, which is associated with the First Amendment to the United States Constitution; and in violation of the Constitution of the State of Missouri, Article I, Section 10, as well as the said Home Rule Charter of St. Louis County, Missouri, which was enacted pursuant to Section 18 (c) of Article VI of the Constitution of the State of Missouri; and does not such action on the part of the County Council constitute enforcement of mass medication, and deprive the citizens of St. Louis County of the privilege of selecting medication of their own choice in violation of Article I, Section 10 of the Constitution of the State of Missouri? (Pleaded, Rec. 6.)

(3) Can the County Council, in violation of the above mentioned constitutional provisions, enact legislation without a vote of the electors where the record shows, according to some expert witnesses on both sides, that fluoridation of the public water supply is very harmful and dangerous to at least a substantial percentage of the people, both adult and children, and the Missouri Supreme Court opinion admits that "a concentration of one part fluoride to one million gallons of water is highly controversial and that there is substantial evidence to support a conclusion either way?" (Rec. 803.)

(4) Is not the decision and judgment of the Missouri Supreme Court void on its face when it holds that a statute can override a constitutional provision, wherein it holds that Section 192.300, R. S. Mo. 1959 (set out in Appendix J. p. 74), overrides the Constitution of the State of Missouri, Article VI, Sec. 18 (c), and Article III, Sec. 22 (20), of the St. Louis County Charter; as well as Section I of the 14th Amendment to the Constitution of the United States?

Is not this a failure of due process and equal protection of the law? Bailey v. Patterson, 369 U. S. 31, 7 L. E. 2nd 512, 82 S. Ct. 549, decided Feb. 26, 1962. Scholle v. Hare, decided by U. S. Supreme Court April 23, 1962, lay down a principle of law applicable here.

(a) Does not this statute (section 192.300) show on its face that it has no application to the facts in the case at bar, because the St. Louis County Council under the operation of the St. Louis County Home Rule Charter superseded county courts, and **St. Louis County has no county court?**

(b) And in any event, does not Section 192.300 apply only to infectious, contagious, communicable or dangerous diseases, none of which are involved in the case at bar?

(c) Does not said Article III of the Home Rule Charter of St. Louis County, Sec. 22, subsections 19, 20 and 24, by its terms define and limit the authority of the County Council, since the record shows that no election was held in any incorporated area of St. Louis County with regard to the fluoridation program as required under Section 22 (19) of Article III of the County Charter, and Article VI, Sec. 18 (c) of the Constitution of Missouri?

(5) Would not such action on the part of the County Council violate and invade the individual rights and religious liberties of the citizens of the County of St. Louis, in violation of the First Section of the 14th Amendment to the Constitution of the United States, even though the vote of the County Council were limited to the unincorporated areas (which would be a physical impossibility because there is only one water system)?; and furthermore, would majorities of the electors have a right to enact legislation which is dangerous to at least a portion of the population, at the expense of the minorities, in violation of Section I of the 14th Amendment to the Constitution of the United States and in violation of the First Amendment to the Constitution of the United States:

(a) When the effect is to deprive the citizens of St. Louis County of their free choice of medication;

(b) When the result can be accomplished by other methods, which will not endanger the minorities, such as tablets to be administered to the individual patient, and attachable devices to put fluorine in the water of those persons who desire it, at home, and by direct application to the teeth, by a dentist;

(c) When the purpose is not to prevent the spread of infectious, contagious, communicable or dangerous diseases, nor to purify the water; but to act upon the individual.

(6) Is not the exclusive jurisdiction over private water companies in Missouri in the Public Service Commission, under Section 386.250, R. S. Mo. 1959, Par. 7 (pleaded Rec. 8 and 9; also set out in Appendix K, p. 75); and therefore would the County Council of St. Louis County have legal authority to enact the legislation in question without prior approval of the Public Service Commission, as required by law; and would not the failure, as shown by the record, of the County Council to apply for such approval, ipso facto, invalidate its proceedings in this regard, depriving persons within the jurisdiction, of due process of law, and equal protection, within Section I of the 14th Amendment to the Constitution of the United States, either directly or through 42 U. S. C. A., Sec. 1983, R. S. 1979 (Civil Action for Deprivation of Rights)?

(7) Is not such action on the part of the said County Council, wherein the ordinance in providing **approximately** one part fluoride to one million gallons of water, and in establishing no definite criteria or standard for the amount of fluoride to be used in the water, in violation of the decisions of this court?

What does "**approximately**" mean? How flexible is it?

Does not this failure to definitely establish the criteria or standard of the quantity to be used of a dangerous cumulative poison in drinking water violate the law as pronounced by this Court in the Saia, Kunz, Connelly, Small, Niemotko, and Hague cases cited, supra, and sustain the jurisdiction of this Court?

(d) CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED.

This is an action brought by certain residents and taxpayers in St. Louis County, Missouri (some of whom live in municipalities), to restrain and enjoin the enforcement of Ordinance No. 01480 enacted by the County Council of St. Louis County, Missouri, and to declare the said ordinance void and of no effect. This ordinance provides for the introduction of fluorides into the only water supply system of St. Louis County, by a private water company, and further provides for the indefinite regulation of such fluoridation.

The case was tried in the Circuit Court of St. Louis County, where the trial court found the ordinance unconstitutional; the defendants appealed to the Supreme Court of Missouri, which upheld the constitutionality of the ordinance, reversing the decree of the trial court. The appellants here, first raised the unconstitutionality of the ordinance in their petition (Rec. pages 1 to 13 incl.), pleading Section 1 of the 14th Amendment to the Constitution of the United States (1. c. 6, et seq.); and also throughout the trial of the case in the Circuit Court of St. Louis County, in their evidence presented (Rec. 46); and in their motion for a directed verdict (Rec. 736); claiming the ordinance violates the 14th Amendment to the Constitution of the United States, and also Article I, Section 10 of the Missouri Constitution, and Article VI, Section 18 (c) of the

Missouri Constitution; likewise at the close of the case, in their request for findings of fact and conclusions of law (Rec. 737, 738).

The appellants below (appellees here) denied that Ordinance No. 01480 is unconstitutional, and have done so since the inception of this action, in their pleadings, at the trial of the case in the Circuit Court of St. Louis County, and in their motion for a new trial or in the alternative for an order or judgment in favor of said defendants.

The ordinance provides that the water is to be fluoridated to **approximately** one part fluoride ion per million parts of water (Rec. 3, 4).

Article VI, Sec. 18 (c) of the Missouri Constitution, and Article III, Secs. 19, 20 and 24 of the Home Rule Charter of St. Louis County provide for a vote by the electors in the incorporated areas.

Upon the trial, it was stipulated that there was no general County election wherein the question of fluoridation was submitted to the vote of the people of St. Louis County (Rec. 32).

Nor was there an election held in the municipalities, and the said residents and taxpayers had no opportunity to vote upon the measure of fluoridation (Rec. 54, 55, 65, 77-81).

Plaintiffs (appellants here) offered experts as witnesses who testified that it is not the concensus of medical scientific and dental opinion that fluoridation of water is beneficial (Rec. 146, 147, 150, 236, 254, 259); and also that fluoridation of public water supplies will in some instances aggravate tooth decay (Rec. 149); that children between the ages of 5 and 13 will be harmed (Rec. 178), that they will have disfigured teeth (Rec. 180) where water is fluoridated to one part to a million gallons; and that somewhere

between 10 and 40 per cent of such children will have mottled enamel (Rec. 181).

Further testimony of plaintiffs was to the effect that persons over thirteen would be harmed by drinking water in which the fluoride ion is injected to the extent of one part in a million, in various ways, including gastro-intestinal disturbances and abnormalities of bone growth and structure (Rec. 185); that such fluoridation would harm women bearing children (Rec. 188); and have some effect on the rate of mongolism (Rec. 191). It was further shown that all chemicals bearing the fluoride ion are insidious poisons (Rec. 194, 195) and that such chemicals are cumulative poisons in the human body (Rec. 196). It was further the opinion of qualified witnesses offered by the Plaintiffs that the fluoridation of water for the purposes of controlling tooth decay would be a medicinal application of fluoridation (Rec. 239); that in children, fluorine settles primarily in the teeth; in adults it settles in the bones and soft tissues (Rec. 292); that persons living in areas where water is fluoridated to one part per million gallons will be harmed (Rec. 44, 176, 177, 178, 180, 181, 184, 185, 294, 295, 311).

Fluoride ion is one of the most reactive ions in existence (Rec. 298, 414); it has a chemical affinity for the calcium of bone (Rec. 43-44); has a violent affinity for calcium (Rec. 259).

Fluoride ion affects the body calcium and blood phosphorus level and increases the calcium output of the body (Rec. 302-303, 389, 390).

It changes the compounds in the body to other compounds; therefore they cannot function in their normal physiology (Rec. 414).

Fluorosis is chronic fluorine poisoning, and dental fluorosis is the dental manifestation of chronic fluorine poison-

ing, and results from a poisoning of the tooth bud during the time the tooth is being formed, otherwise known as mottled enamel (Rec. 154, 166).

There is no calcium in sodium fluoride, which is added to public water supplies (Rec. 259), and sodium fluoride (which is a by-product of industry) is 80 times more poisonous than calcium fluoride which is a chemical found in nature (Rec. 663, 664).

The reason there exists a lower caries incident in areas where the water supply is **naturally** fluoridated is that a higher quantity of calcium and phosphorous exists in the soil and thereby promotes stronger teeth (Rec. 441, 442).

Plaintiffs' expert on fluoridation, Dr. Frederick B. Exner, a member of the committee of the AMA on drugs, testified that the American Medical Association has not approved fluoridation; likewise, the following organizations did not approve fluoridation namely: the American Cancer Society, the Texas State Medical Association, the Washington State Medical Association, the Pasteur Institute, the American Waterworks Association (Rec. 150, 151). Another expert, Dr. Geo. L. Waldbott, testified that certain so-called research which favored fluoridation, and was sponsored by fluoride-selling agencies, could not be taken at its face value because it was contrary to true facts (Rec. 322, 331); that the official attitude of many of the organizations favoring fluoridation was taken on a political basis rather than a scientific basis (Rec. 329 to 332).

Of the 21,975,000,000 gallons of water pumped by the water company per year (Rec. 95) obviously only a very small percent is used for drinking (Rec. 112, 281).

The dosage of fluorine cannot be controlled through a public water system as the amount different people drink varies greatly (Rec. 239, 243, 281, 282, 288, 528, 529). Nor can the dosage be controlled away from the

point of injection of the fluoride because the fluoride content in the water can be concentrated by evaporation; it can be reduced by corrosion of iron; there are forces to vary the content anywhere throughout the delivery system; and the fluoride content will be increased by boiling, as when food is being cooked in water (Rec. 403, 404, 405).

It was further shown it is impossible to deliver water at the tap containing uniform proportions of fluorine so as to control the dosage (Rec. 402, 403).

There are other ways of fluoridation, permitting control of the dosage and much safer, to-wit: direct or topical application to the teeth so that none of the chemical gets into the body system; pills for solution to be taken in measured quantities; tablets to put in drinking water as prescribed by a physician (Rec. 238 to 241, 250, 251, 252, 253, 259).

Both sides testified that caries in teeth is not a communicable disease, and could not create an epidemic (Rec. 238, 239, 533).

Witnesses offered by the defendants as experts testified that in their opinion a water supply which contained one part per million of fluoride ion would not be harmful in any respect to persons who drink it (Rec. 494); that there is no difference in the fluoride ion between that found naturally in water and that artificially provided in water (Rec. 495); that the fluoride ion contained in public water supply in one part per million is very beneficial to persons drinking it and particularly children in producing resistant enamel on teeth (Rec. 496). It was further testified that no health defect has been noticed in communities that have fluoridation in water even up to the extent of ten to twelve parts per million (Rec. 501) although the optimum amount would be approximately one part per million. It was the opinion of these witnesses offered by the defendants that no harmful defect of the tissues or parts of the

body are caused by the drinking of fluoridated water (Rec. 503, 504, 505); that fluoridated water in the form prescribed was not poisonous (Rec. 505) and that some portion of fluoride is retained, approximately one-third (Rec. 507), but this varies with the age of the individual and amount of new bone structure being laid down, the rest is excreted (Rec. 506).

Defendants further showed that fluoridation of water supply is safe and practicable (Rec. 563-574); that fluoridation in one part per million causes a 65% reduction in the incident of tooth decay in children up to the age of ten years (Rec. 653-654); also that there is some direct benefit to adults (Rec. 654); that fluoridation of public water supply in one part per million has been endorsed by the St. Louis Medical Society (Rec. 572), also the meeting in St. Louis of the house of delegates of the Missouri State Medical Association (Rec. 576); the Missouri Department of Health and Welfare (Rec. 650), Commissioner of Health of St. Louis County (Rec. 672), the Council of St. Louis Dental Society, twelve in number, although the total membership of 941 had no chance to vote on the measure (Rec. 616-618); and also other scientific societies and authorities have approved it (Rec. 503).

The chief witness for the defendants, Dr. D. R. Van Wyngarden, however, testified that 10 to 12% of the children using fluoridated water, would be harmed, using one part per million (Rec. 682 to 684).

DECISION OF THE TRIAL COURT.

The trial court held on the facts of this case that the ordinance if enforced would constitute mass medication; that there were other available methods for those desiring fluoridation; that tooth decay is not infectious or contagious; that there was here no "pressure of great dangers"; that this ordinance is unconstitutional and void under the provisions of both the Constitution of the United

States and the Constitution of the State of Missouri (Rec. 739-754; 760-775; Rec. 780-792; also Appendix B., p. 53).

Among other findings, **the trial court found that the plaintiffs will be compelled to drink the water because there is no other practical source of supply other than from the St. Louis County Water Company** (Rec. 742, 743; Rec. 782, 783); that persons drinking the water will receive compulsory "treatment" for dental caries, which is not contagious or communicable in any way and in no way endangers the public health in the sense that its existence in the teeth of one individual might adversely affect the personal health of any other individual (Rec. 742, 743; Rec. 782, 783); the Court also found that fluorides are readily obtainable by prescription for topical application to teeth and for use in milk, water and salts (Rec. 742; Rec. 782).

The Court in its conclusions of law noted that such fluoridation would be forced medication or medical treatment forbidden by the tenets of certain churches or religious sects, and consequently an ordinance such as Ordinance No. 01480, violated the right of free exercise of religion (Rec. 744, Rec. 784).

The trial court distinguished cases from other states as not being in point, because "Here, as alleged by plaintiffs, we have a County Council acting under a charter form of government which has passed an ordinance attempting to regulate the distribution of water and to fluoridate same not only in the unincorporated areas where the Council no doubt has jurisdiction, but also in those municipalities which are separate entities and wherein the Council of St. Louis County does not have any jurisdiction under its charter" (Rec. 745, 746; Rec. 785).

Further, the trial Court held that the case at bar was distinguishable from the other cases because the Missouri

legislature gave "the Public Service Commission of said state the jurisdiction over all water companies and the power to prescribe rules and regulations as well as defining specifically by said rules and regulations what said water companies may or may not add to their water distribution system (Laws of Missouri, 1949, Public Service Commission, Sections 393.130, 140 as well as Sections 386.240, 250, 310 (Rec. 746; Rec. 785, 786)." (Appendix K sets out Section 386.250, subsections 7 and 9, p. 75).

The trial court found Ordinance No. 01480 unconstitutional and void "in that said ordinance attempts to order a privately owned company to fluoridate its entire water system when some of the users of said water, and specifically plaintiffs being residents and taxpayers in incorporated areas have had no opportunity to vote upon the measure of fluoridation, such an order being in direct violation of Article VI, Section 18 (c) of the Missouri Constitution" (Rec. 747, Rec. 786); * * * which "clearly requires a vote of the majority of the qualified electors thereon in municipalities or subdivisions prior to a county (charter form of government—St. Louis County) performing any of the services and functions of any municipality" (Rec. 748, Rec. 787).

The trial court held that the said ordinance is likewise "in violation of Article III, Section 22 of the charter of St. Louis County, which provides the manner in which the County shall perform any of the services and functions of any municipality and requires an acceptance by a vote of a majority of the qualified electors voting thereon in said incorporated municipality. Article III of St. Louis County's charter was enacted pursuant to and in conformity with the aforesaid Article VI, Section 18 (c) of the Missouri Constitution and the Court therefore holds that said ordinance deprives plaintiffs of 'life, liberty and property without due process of law', and is in violation

of the Fourteenth Amendment of the Constitution of the United States and is therefore void and unconstitutional" (Rec. 748, Rec. 787).

The trial court likewise held that "plaintiffs, would be **compelled** to **consume fluoridated** or **treated water.** The liberty, therefore, that plaintiffs are deprived of might be said to be that decision that they should be free to make as to whether they desire to apply fluorine to their teeth for the purpose of preventing tooth decay or not" (Rec. 749, Rec. 787, 788).

The trial court further held that—(Rec. 750; Rec. 788) "Any regulation or measure directly affecting the person in his bodily liberty or integrity represents the most incisive exercise of the police power. This Court adopts the reasoning of Mr. Justice Harlan of the United States Supreme Court when he stated in Jacobson v. Massachusetts, 197 U. S. 11:

> 'Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint **under conditions essential** to the **equal enjoyment** of the **same right by others.** It is, then, liberty regulated by law. There is, of course, a sphere in which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, **under the pressure of great dangers,** be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the **general public** may demand.' (Emphasis supplied.)

"Now, can it be said that the 'fluoridation ordinance', being an infringment of the individual's constitutional right of freedom of choice in matters relating to his own bodily care and health is justified by 'conditions essential to the equal enjoyment of the same right by others' or can it be justified by 'pressure of great dangers' to the public health?"

Continuing, the trial court held (Rec. 752, Rec. 790):

> "Defendants would readily admit that an ordinance requiring every resident or child under fourteen years of age to present himself or herself for topical application of fluorides by public health authorities would be unconstitutional. However, is the fluoridation ordinance, under attack by plaintiffs, any different? If the children under the age of fourteen could not be compelled to present themselves one by one to the health authorities for such topical application of fluorides, how could the County Council by the ordinance in question indirectly force the residents of this County to do 'en masse' what the Council could not compel each individual to do—submit himself for individual treatment? * * * Again the 'pressure of great dangers' that Justice Harlan referred to as being present when the rights of an individual must be subjected to the safety of its members by reasonable regulation and restraint **as the safety of the general public might demand, is just not present and it can't be found under the evidence submitted to this Court.** (Emphasis supplied.) The ordinance, therefore, is invalid and unconstitutional as an unwarranted and unjustified invasion of the liberty as guaranteed plaintiffs and others under Section 1 of the Fourteenth Amendment of the United States Constitution" (Rec. 752, 753, 754; Rec. 790, 791).

In the Supreme Court of Missouri the appellants here continued to urge that the said ordinance violates the

First Section of the 14th Amendment, and also the First Amendment to the Constitution of the United States, as well as the decisions of this court.

The Supreme Court, however, brushed aside the said arguments and held the ordinance constitutional (Rec. 794-813, l. c. 807).

The decision of the Missouri Supreme Court is untenable.

The Supreme Court in its opinion admitted (Rec. 797): "It is apparent that respondents' position is correct if the council's power in the premises is derived solely from Article VI, Sec. 18 (c) of the Constitution, and Article III, Sec. 22 (20) of the County Charter."

The Supreme Court then goes on to state—(Rec. 797): • • • "St. Louis County may also exercise the powers pertaining to the public health validly conferred by the state upon counties of the first class. Article IV, section 37, of the Missouri Constitution declares that 'The health and general welfare of the people are matters of primary concern' and the general assembly shall establish a department of public health and welfare and may grant power with respect thereto to counties, cities, or other political subdivisions of the state. The legislature, as directed, established a department of public health and welfare and, among others, enacted Section 192.300, R. S. Mo. 1959" (Rec. 798) (set out in Appendix J attached hereto, p. 74), "which provides in part: 'The county courts of the several counties of class one are hereby empowered and permitted to make and promulgate such rules, regulations or ordinances as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county, • • • • "

The Supreme Court also relied on Article I, Section 2 of the County Charter (Rec. 798), which provides: "The County shall have all the powers now or hereafter vested

by the Constitution and laws of Missouri in county courts, county offices, counties of the first class, counties having the population or assessed valuation of taxable property of St. Louis County, Missouri, and counties of any other class in which St. Louis County may hereafter be includable, and all the powers provided in this Charter, and all other powers that are necessarily implied under the powers so granted.'" (Emphasis added.)

Based on the "constitutional, statutory and charter provisions last above set forth" (i. e., Article IV, Section 37 of the Missouri Constitution; Sect. 192.300, R. S. Mo. 1959; and Article I, Sec. 2 of the St. Louis County Charter), the Supreme Court of Missouri then holds that "the county council was and is authorized to enact ordinances tending to enhance the health of all the residents of St. Louis, irrespective of whether they also reside within a municipality" (Rec. 798).

The Court further said, "Assuming, then, for the present that the ordinance in question is one which was intended to and which does tend to enhance the public health, a question we shall later discuss, we hold that the county council had the authority and the power to enact such an ordinance applicable county-wide and, consequently, that the ordinance does not violate Article VI, Section 18 (c) of the Missouri Constitution or Article III, Section 22 (20) of the St. Louis County Charter" (Rec. 798).

The appellants respectfully submit that the ruling of the Supreme Court of Missouri is in error because Section 192.300 pertains to counties and county courts, and St. Louis County has no county court, but instead has a county Council operating under the provisions of the Home Rule Charter of St. Louis County, and Article I, Section 2 of said Home Rule Charter is a **general section**, defining in general the powers which St. Louis County will have under its charter, whereas **the powers conferred upon the**

County Council are outlined and set forth elsewhere in said Home Rule Charter, to-wit, in Article III (Appendix G, p. 71).

Furthermore this statutory provision could not possibly override Article VI, section 18 (c) of the Missouri Constitution. The powers of the County Council as to public health are limited to the **unincorporated areas** in the County.

Section 18 (a) of Article VI of the Missouri Constitution authorizes counties of more than 85,000 inhabitants to frame and adopt a charter for its own government. St. Louis County had at the time of the adoption of the Home Rule Charter, a population of over 400,000 inhabitants and adopted the above described Charter.

The result of the Missouri Supreme Court's ruling here would be to **nullify Article VI, Section 18 (c)** of the Missouri Constitution, and **Article III, Sec. 22 (19, 20 and 24) of the St. Louis County Charter**, and thus to nullify vested Constitutional rights under the first section of the Fourteenth Amendment of the Constitution of the United States by denying these appellants and all others similarly situated in St. Louis County due process of law and the equal protection of the laws.

The Missouri Supreme Court itself has held that the county court is not the same as the county council under a different name. **Schmoll v. Housing Authority of St. Louis County**, 321 S. W. (2d) 494, where the court expressly held, furthermore (l. c. 498), that having become a charter county, "its charter became its fundamental organic law and the County Council is obliged to look to the charter for its powers, and acts beyond the powers granted or necessarily implied are void" citing **State ex rel. Town of Olivette v. American Telephone & Telegraph Company**, 280 S. W. 2d 134, 137-138.

How can the Missouri Supreme Court consistently declare the law in this way in the Schmoll case and now hold in the case at bar that the County Council had authority to disregard its charter powers? We submit that the voters in the incorporated areas had the undoubted right at least to vote on the issue.

In the case of **Charles W. Baker et al. v. Joe C. Carr et al.**, decided by this Court on March 26, 1962 (see U. S. Law Week, Vol. 30, No. 37, p. 4203), which was a redistricting case, and in which this Court considered the right of the electors to vote, this Court held that the failure to permit them to exercise their right to vote debased their votes, and denied them the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States.

The facts in the case at bar are even stronger than those in the Baker case for the reason that in the case at bar the County Council, consisting of seven members, have undertaken to legislate on a matter and in an area over which they have no jurisdiction and no authority, and in doing so have deprived the electors in the incorporated areas and municipalities of St. Louis County of their right of suffrage given to them by the Missouri Constitution, as well as the Home Rule Charter of St. Louis County.

In the Baker case this Court recognized "a citizen's right to a vote free of arbitrary impairment by state action", citing U. S. v. Classic, 313 U. S. 299. This Court further stated, "They are asserting 'a plain, direct and adequate interest in maintaining the effectiveness of their votes' ", citing Coleman v. Miller, 307 U. S. at 438, "not merely a claim of 'the right, possessed by every citizen, to require that the Government be administered according to law * * *' ". Also, " 'The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an in-

jury' ", citing Marbury v. Madison, 5 U. S. (1 Cranch.), 137, 163.

In the case at bar, following a resume of the evidence, the Missouri Supreme Court states: "It is apparent * * * that the question whether over-all harm or over-all benefit will result to individuals who consume water containing the fluoride ion in a concentration of one part fluoride to one million gallons of water is highly controversial and that there is substantial evidence to support a conclusion either way" (Rec. 803).

The Supreme Court finds that the ordinance bears a reasonable relation to public health and "that its provisions are designed to and reasonably will tend to enhance the public health and, therefore, that the action of the St. Louis County Council, in enacting the ordinance in question, was an exercise of the power conferred by Section 192.300, supra" (Rec. 803).

Next, it considers "whether the ordinance unduly invades or infringes rights guaranteed by the state and federal constitutions" (Rec. 803).

It holds (Rec. 803-805) that there is not before the court the question of the violation of respondents' or others' freedom to believe and practice the tenets of their religious belief or involving the violation of any other First Amendment right, the Supreme Court thus brushing aside the brief filed by the amicus curiae, which was adopted by these appellants, and which urged that fluoridation would be forced medication or medical treatment forbidden by the tenets of certain churches or religious sects, and consequently an ordinance such as the one in the case at bar, violated the right of free exercise of religion. The Supreme Court said (Rec. 804, 805), "Even if we should take judicial notice that the belief suggested by counsel is a religious belief of Christian Scientists, still we should

not know whether, nor could we assume that, it would violate that belief for one to consume water which theretofore had contained one-half part fluoride, simply because another one-half part had been added;" the Supreme Court evidently overlooking that part of the record, including the testimony of an eminent biochemist (Rec. 359-447) Dr. W. A. Albrecht, showing the difference between natural or calcium fluoride which is found in some places in water, and sodium fluoride which is manufactured and added to water in fluoridation programs, and which has an entirely different chemical reaction and is much more dangerous; and overlooking the fact that forced medication by fluorides is objectionable because dangerous to a large segment of the people, which includes Christian Scientists, and overlooking the fact that medication is medication irrespective of one's religious belief, and that forced medication is undesirable to these appellants as shown by the record and as pleaded in plaintiff's petition (Rec. 6, 46).

Section 192.300, R. S. Mo. 1959, which the Missouri Supreme Court says applies, does not apply to the case at bar. Otherwise, we would have one constitutional provision requiring a vote of the electors in incorporated areas, and having another contitutional provision diametrically opposed to the same. Such is not the case, and was certainly never intended by the framers of the Missouri Constitution of 1945.

It is noteworthy that the Supreme Court (Rec. 809) stated that it was not concerned with the expediency of the ordinance or with the wisdom of the Council's action in enacting it; although the Court recognizes that there is a very real compulsion (Rec. 810) for many from a practical standpoint to drink the fluoridated water when the only apparent ways to avoid drinking public water and to avoid consuming the artificial fluorides added to it are, for many prohibitively expensive or unduly burdensome.

In answer to the argument of these appellants that Sections 196.125-196.145, R. S. Mo. 1959 (pleaded Rec. 8; also set out in Appendix I, p. 73), defines non-alcoholic drinks, and forbids the introduction therein of fluorides, the Supreme Court holds that (Rec. 812) carbonated beverages, sarsaparilla, ginger ale, soda water, lemonade, orangeade, root beer, grape juice, and other non-alcoholic drinks, mentioned in the statute do not include water, the Court overlooking the fact that water is the prime ingredient in all of these drinks.

The opinion ends by holding that the ordinance in question is not invalid for any of the reasons urged in the case as set out in the opinion.

Appellants respectfully submit that the opinion of the Supreme Court of Missouri militates against the federal constitutional and statutory provisions hereinabove discussed as well as the above decisions of this Court herein cited and discussed.

In the motion for rehearing filed in the Supreme Court of Missouri, the appellants here again urged that the Missouri Supreme Court misconstrued Ordinance No. 01480 passed by the St. Louis County Council in holding that it does not violate Section I of the 14th Amendment to the Constitution of the United States (Opinion of Sup. Ct. of Mo.), as well as Art. I, Sec. 10 of the Missouri Constitution (Rec. 816 et seq.).

THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

The decision of the Supreme Court of Missouri is far-reaching in its extent and is a matter of great importance to the public and to the public interests all over the United States.

The questions have not been passed upon by this Court, in connection with fluoridation of public water supplies,

but the question of fluoridation has been and is presently up for consideration in many states and even in foreign countries. Some areas have fluoridated the public water supply and have since discontinued the practice. Other areas are now fluoridating, and still other areas have under consideration the question of whether to fluoridate the public water supply. The question of fluoridation has been considered in a number of state court decisions. Where the decision has been in favor of fluoridation, the issue of harm to the general public was not raised nor was there evidence of harm introduced.

See article in the American Bar Journal (May 1960, Vol. 46, page 523) sustaining the position of appellants in this Court.

In the case at bar, the question of harm was before the court, appellants contend that fluoridation of public water supplies is a wasteful procedure; dangerous to the health of a large segment of the people; that it is impossible to control the dosage in the public water supply; it is the further contention of appellants that the introduction of fluoride into the public water supply amounts to mass medication and is violative of the 14th Amendment to the Constitution of the United States, and denies due process and equal protection of the law, is arbitrary, unreasonable and harmful, and is also violative of freedom of religion guaranteed by the First Amendment to the Constitution of the United States, and violates the Missouri constitutional and statutory provisions above set out.

Article I, Section 10 of the Missouri Constitution, like the 14th Amendment to the Constitution of the United States, provides for due process. It is the contention of the appellants that a violation of due process under Article I, Section 10 of the Missouri Constitution, constitutes also a violation of the 14th Amendment to the Constitution of the United States, just as a violation of Sec-

tion 1983 of 42 U. S. C. A. is violative of Section 1 of the said 14th Amendment, since Section 1 of the 14th Amendment operates on said Section 1983.

So far as we have been able to ascertain, in only two cases have there been **appeals** taken to this Court in fluoridation cases, to-wit, the case of **Chapman v. Shreveport**, 225 La. 859, 74 S. (2d) 142, 348 U. S. 892, 75 S. Ct. 227, 99 L. Ed. 701; and **Kraus v. City of Cleveland et al.**, reported at 163 Ohio 559, 127 N. E. 2d 609, appeal dismissed by this Court, **351 U. S. 935**, 76 S. Ct. 833, 100 L. Ed. 1463, both cases were dismissed by this Court for want of a substantial federal question.

There are at least 4 distinctions between those cases and the case at bar:

(1) The City Council had authority from the City of Shreveport to fluoridate the water;

(2) There was no evidence introduced to show the harmful effects of fluoride on human beings;

(3) There was no evidence to show that sodium fluoride, which is artificial, and which is a by-product of industry, is eighty times more dangerous than calcium fluoride which is found in nature;

(4) In neither of those appeals was the question of the right of the public to vote on the proposition an issue.

In the Chapman case the record showed that the fluoridation of communal water supplies was in an experimental stage, that no tests had been made, and there was no evidence before the Court of the harmful effects of fluoridation, and therefore there was no evidence of a violation of the constitutional rights of the population. The evidence was in the form of affidavits and statements of witnesses. This Court dismissed the appeal for want of a substantial federal question.

In the trial of the Kraus case, supra, which is reported in **116 N. E. (2d) 779**, it was stipulated under "Facts Agreed upon by the Parties" (l. c. 785), that (l. c. 788):

> "11. The said inorganic fluoride chemicals to be introduced into the drinking water of the City of Cleveland will not, and are not intended to have any effect on the potability, palatability or purity of the drinking water of the City of Cleveland."

In the trial court's opinion, l. c. 793 (2nd column, line 16), it was stated:

> "These objections are not based upon the claims that the program will cause injury."

The opinion of the Supreme Court of Ohio, therefore, was based upon the right, which was not challenged, of the City Council to enact legislation on fluoridation, and on the fact which was also agreed, that fluoridation was not harmful; **while in the case at bar there was no legal authority in the County Council of St. Louis County to enact such legislation, and the plaintiffs pleaded and proved a number of adverse physiological effects of fluoridation upon human beings.**

This Court dismissed the appeal in the Kraus case May 21, 1956. Much progress has been made in the study of fluoridation since that time, showing harmful effects, and much scientific evidence has been adduced, on the dangers of introducing fluorides into a public water system, since the said dismissal.

In two other cases, certiorari was denied by this Court for obvious reasons (improper application, and no evidence offered to show the deleterious effects of introducing fluoride into drinking water):

Dowell v. Tulsa (1954), 273 P. (2d) 859, 348 U. S. 912, 75 S. Ct. 292, 99 L. Ed. 715;

C. Leon de Aryan v. Butler, Mayor of San Diego, 119 C. A. (2d) 674, 260 P. (2d) 98, Cert. denied 347 U. S. 101 2, 74 S. Ct. 863, 98 L. Ed. 1135. In this case the matter became moot, because San Diego decided not to fluorinate.

CONCLUSION.

Appellants respectfully suggest that this appeal brings before this court federal questions under the constitution that are far-reaching and important, both in terms of legal principles and practical impact upon the public throughout the nation; the ordinance is unreasonable, oppressive and arbitrary in that it denies plaintiffs the right to vote on the question of the use of fluoride in the communal water supply, which definitely has a harmful effect on part of the population; it violates their constitutional rights as set out herein, and therefore the questions presented are so substantial as to require full consideration, with briefs on the merits, and oral argument, for their resolution.

Respectfully submitted,

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APPENDIX A.

Opinion of the Supreme Court of Missouri, entered December 11, 1961, in Cause No. 48,453.

In the Supreme Court of Missouri.
Division Number One,
September Session, 1961.

Dagmar Readey, Edward L. Glauert, Hiram Schmedel, Chris J. Muckerman, Henry J. Johnson, Robert Burkham, Mignon E. Dietrich, and Jack Welch, Jr., Respondents,

vs.

St. Louis County Water Company, a Corporation, Defendant,

and

Thomas C. Dunne, Maurice M. Abramson, John J. Dowling, Richard A. Hetlage, Russell A. Grantham, George E. Bohrer, John F. Molloy, Members of the County Council of the County of St. Louis, Missouri; Edward A. Walsh, County Clerk of St. Louis County, Missouri; Dr. C. Howe Eller, Acting Health Commissioner of the County of St. Louis, Missouri, and Successors in Office, Appellants.

No. 48,453

Appeal from the Circuit Court of St. Louis County.

Honorable Douglas L. C. Jones, Judge.

In June 1959 the St. Louis County Council enacted an ordinance which directed the St. Louis County Water

Company to introduce a sufficient quantity of the fluoride ion into the water it furnished county consumers to maintain throughout the distribution system a fluoride concentration of approximately one part fluoride per million gallons of water, and which directed the Water Company to make certain tests and keep certain records, and which directed the county health commissioner to make periodic reports to the council on the fluoridation of the water supply and to arrange for surveys and research into the beneficial effect of the program.

Respondents are eight resident taxpayers of St. Louis County and are consumers of water distributed by the Water Company, some of whom resided in various municipalities within the county. They brought an action against the Water Company, the then members of the county council, the county clerk, and the acting county health commissioner, to enjoin the enforcement of the ordinance for the averred reason that it was invalid in that it violated stated provisions of the federal and Missouri Constitutions and provisions of specified state laws.

At the close of respondents' evidence the trial chancellor sustained Water Company's motion to dismiss and there has been no appeal from the ensuing judgment of dismissal. At the close of all the evidence the trial chancellor enjoined the remaining defendants below from enforcing the ordinance for the stated reason that it was void in that it violated provisions of the state and federal constitutions in the respects to be hereinafter noted.

Those defendants have appealed and contend that the trial court erred for the reason that the ordinance is a valid exercise of the county council's police power to promote the public health. Respondents here seek to support the trial court's ruling for the stated reasons that the ordinance is unconstitutional in that it violates the Fourteenth Amendment to the Constitution of the United

States and Article I, Section 10 of the Missouri Constitution in that it unduly infringes their and other county residents freedom of choice in matters relating to bodily care and health by compelling them to drink fluoridated water against their wills; that the ordinance violates the First Amendment to the Constitution of the United States in that it subjects Christian Scientists living in St. Louis County to forced medication contrary to their religious beliefs; that the ordinance violates Article VI, Section 18 (c) of the Constitution of Missouri in that it applies to the entire county, including the county municipalities, and therefore its enactment was beyond the power of the county council; and that the enforcement of the ordinance would violate Missouri statutes relating to the adulteration and misbranding of nonalcoholic drinks.

Inasmuch as the validity of the contention that the ordinance violates Article VI, Section 18 (c) of the Missouri Constitution, depends on the question whether the council had the power and authority to have enacted any ordinance purporting to deal with matters relating to the public health of persons residing within county municipalities, and inasmuch as an affirmance of the trial court's ruling on that question would be dispositive of the case, we shall first consider that contention.

The ordinance in question contemplates, and its enforcement would involve, the addition of a quantity of the fluoride ion to all of the water leaving Water Company's purification plant and such water is sold to consumer residents of St. Louis County who live both within and without incorporated areas of the county, and the water so furnished is, for all practical purposes, the only water available to county residents.

Article VI, Sections 18 through 20, 1945 Missouri Constitution, authorizes special charters for the government of certain counties and authorizes the inclusion of speci-

fied provisions in those charters. Section 18 (c) is: "The charter may provide for the vesting and exercise of legislative power pertaining to public health, police and traffic, building construction, and planning and zoning, in the part of the county outside incorporated cities; and it may provide, or authorize its governing body to provide, the terms upon which the county shall perform any of the services and functions of any municipality, or political subdivision in the county, except school districts, when accepted by vote of a majority of the qualified electors voting thereon in the municipality or subdivision, which acceptance may be revoked by like vote." 2 V. A. M. S.

Pursuant to that constitutional authorization, St. Louis County's Home Rule Charter provided in Article III, Section 22 (20) that the council should have the power by ordinance "To exercise legislative power pertaining to public health, police and traffic, building construction, and planning and zoning, in the part of the County outside incorporated cities, and on such other subjects as may hereafter be authorized by the Constitution or by law, provided that, until superseded by ordinances of the Council, the laws pertaining to said matters shall continue to be valid and effective." And Section 22 (19) provided that the council should have power by ordinance "To provide the terms upon which the County shall perform any of the services and functions of any municipality or political subdivision in the County, except school districts, when accepted by a vote of a majority of the qualified electors voting thereon in such municipality or subdivision, which acceptance may be revoked by a like vote; and to cooperate and contract with the municipalities or political subdivisions in the County as otherwise authorized by this charter and by law."

It was the opinion of the trial chancellor and it is the contention of respondents here that the ordinance in ques-

tion violates the constitutional and charter provisions above set forth for the reason that the county council's power to enact public health ordinances was limited to the enactment of ordinances affecting only those areas outside incorporated cities. It is apparent that respondents' position is correct if the council's power in the premises is derived solely from Article VI, Section 18 ( ) of the Constitution, and Article III, Section 22 (20) of the County Charter. The fact is, however, that the county council's power in certain matters, including the enactment of ordinances which tend to enhance the public health, is not limited to the power conferred by Article VI, Section 18 (c) of the Constitution and set forth in Article III, Section 22 (20) of the County Charter. On the contrary, St. Louis County may also exercise the powers pertaining to the public health validly conferred by the state upon counties of the first class. Article IV, Section 37 of the Missouri Constitution declares that "The health and general welfare of the people are matters of primary public concern" and the general assembly shall establish a department of public health and welfare and may grant power with respect thereto to counties, cities, or other political subdivisions of the state. The legislature, as directed, established a department of public health and welfare and, among others, enacted Section 192.300, R. S. Mo. 1959, and 12 V. A. M. S., which provides in part: "The county courts of the several counties of class one are hereby empowered and permitted to make and promulgate such rules, regulations or ordinances as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county; provided such rules, regulations and ordinances shall not be in conflict with any rules or regulations authorized and made by the division of health in accordance with this chapter."

Article I, Section 2 of the County Charter provides: "The County shall have all the powers now or hereafter vested by the Constitution and laws of Missouri in county courts, county offices, counties of the first class, counties having the population or assessed valuation of taxable property of St. Louis County, Missouri, and counties of any other class in which St. Louis County may hereafter be includable, and all the powers provided in this Charter, and all other powers that are necessarily implied under the powers so granted."

It appears, therefore, that by virtue of the constitutional, statutory, and charter provisions last above set forth, the county council was and is authorized to enact ordinances tending to enhance the health of all the residents of St. Louis County, irrespective of whether they also reside within a municipality. See State ex rel. Shepley v. Gamble, Mo., 280 S. W. 2d 656.

Assuming, then, for the present that the ordinance in question is one which was intended to and which does tend to enhance the public health, a question we shall later discuss, we hold that the county council had the authority and the power to enact such an ordinance applicable county-wide and, consequently, that the ordinance does not violate Article VI, Section 18 (c) of the Missouri Constitution, or Article III, Section 22 (20) of the St. Louis County Charter.

It should be here noted that there is no claim or contention that in enacting the ordinance the county council acted arbitrarily or without sufficient investigation or upon insufficient knowledge, nor is there any contention that there was any procedural irregularity with respect to the enactment of the ordinance in question. Even though there is no showing in the present record as to what information the council had upon which it based the exercise of its legislative power in enacting the ordinance, in the absence

of any contention as to insufficiency of information and in the absence of any claim of procedural irregularity, we should and do assume that the council had the information and knowledge which the evidence in the present record affords.

As we have heretofore indicated, there is no dispute about the fact that, generally speaking, a resident of St. Louis County, whether within or without a municipality, must use water supplied by the Water Company (although the evidence does show that the City of Kirkwood, a municipality within the county, had been fluoridating its water for a period of two years prior to the trial, but the record does not show whether Kirkwood's water is from some other source or whether that city further treats water which it purchases from the Water Company). Further, there is no dispute about the fact that the Water Company obtains the water it supplies from the Missouri River and that such water as it is taken from the river contains an average of .5 part of the fluoride ion per million gallons of water, and that such fluoride content is not removed from the water, but remains in it, anqd thus that the Water Company, irrespective of the ordinance, furnishes water fluoridated to the level of one-half part fluoride to each one million gallons of water; so that the effect of the ordinance is to require the Water Company only to supplement the existing concentration of fluoride by adding one-half part per million gallons in order that there will be a total of one part fluoride per million gallons of water.

It appears also that there is no dispute about the facts that the fluoride ion in water acts upon the individual who drinks the water rather than upon the water as such as a purifying agent, and, consequently, the ordinance requirement for an additional amount of the fluoride ion is for the purpose of affecting the dental health of each individual who consumes the fluoridated water; and that dental caries

or tooth decay is not a contagious or communicable disease and cannot produce an epidemic.

Respondents adduced evidence, including the opinions of apparently well-qualified experts, tending to establish the proposition that the ingestion of water containing any fluoride is harmful to the individual consuming it, and that water containing one part fluoride to a million gallons of water is harmful in many ways. That evidence tended to show that ten to forty per cent of children between the ages of 5 and 13 who consume water fluoridated one part to a million will have disfigured teeth, including mottled or discolored enamel; that older people consuming such water will suffer from gastrointestinal disturbances, including nausea, vomiting, constipation and diarrhea; that they will also sustain damage to the liver and kidneys and, under some circumstances, to other vital organs such as the aorta, and suffer abnormalities in bone growth and bone structure; that pregnant women consuming such water will sustain injury and bear children whose teeth will show later damage; that certain people, as a result of drinking such water, develop arthritic changes in the lower spine, neuromuscular changes in the arms and legs, partial palsy of the arms and legs, abnormal reflexes, severe headaches and extreme weakness.

Respondents' evidence tended to show further that fluorine is not an essential element of the human body and that all chemicals bearing the fluoride ion are insidious poisons and are cumulative in the human body; that due to the fact that different people drink different amounts of water and the same person consumes different amounts of water depending upon the time of year and for other reasons, it is difficult, if not impossible, to control the amount of the fluoride ion ingested by a particular individual when a specified amount is introduced into a public water supply; and that there are methods other than the addition of the

fluoride ion to the public water supply by which fluorine may be applied to the teeth, such as an application by a dentist directly on the teeth, or by fluoridating an individual user's water supply by dissolving tablets therein.

Appellants adduced evidence, including the opinions of apparently well-qualified experts, tending to establish the proposition that fluoridation of water as proposed by the ordinance in question would result in harm to no one, but, on the contrary, would be highly beneficial to the residents of St. Louis County in that it would reduce dental decay in children up to 14 years of age by as much as sixty-five per cent by means of hardening the enamel on their teeth, and that this same reduction in decay would accrue to older age groups provided the members of those groups had drunk the fluoridated water from birth. Appellants' evidence substantially supported the conclusions: that there is phenomenal agreement among professional and scientific groups in the United States and in the world that fluoridation of public water supplies in the amount provided by the ordinance in question is of great significance in terms of general health, in producing a dental caries resistant enamel on teeth; that "Dental decay is recognized as man's most widespread chronic disease. Few persons escape. No social stratum or age group is immune. A decayed tooth never heals by itself, by prescription or by advice. About 97,000,000 people in the United States have decayed teeth requiring treatment"; that fluoridation of water is safe, practicable, not unduly expensive as a health measure, and is efficacious. Appellants' evidence tended to show further that the harmful effects suggested by plaintiffs' evidence would not occur and the testimony of one of appellants' witnesses was that he practiced dentistry in Kirkwood (a municipality in St. Louis County) where the water supply had been fluoridated since January 1, 1958, and that he had observed no harmful effects; that dental fluorosis or mottling of the enamel on teeth occurs to an appreciable

extent only when there is an excessive amount of fluoride in the water, that is, in excess of two parts fluoride per million gallons of water.

The evidence also established that fluoridation of public water supplies to the extent provided in the ordinance had been endorsed by the St. Louis Dental Association, the Missouri State Dental Association, the American Dental Association, the American College of Dentists, the Missouri Public Health Association, the American Public Health Association, the Missouri State Department of Health, the United States Department of Health, Education and Welfare, the St. Louis Medical Society, the Missouri State Medical Association, the American Medical Association and the St. Louis County Health Department; that there are twenty-five communities in Missouri now fluoridating their water supplies to approximately one part per million; that at trial time there were 1,134,000 people in Missouri drinking artificially fluoridated water to the extent of one part per million gallons; and there were 109,000 people drinking naturally fluoridated water in various amounts; for example, in Columbia, Missouri, the natural fluoride content is 1.32 parts fluoride per million gallons of water; that Army, Navy and Air Force installations where children are in residence furnish fluoridated water.

Appellants' evidence tended to show further that water fluoridated as the ordinance required is nonpoisonous; that toxicity will occur only at concentrations 20 to 50 times as great as that proposed by the ordinance; that while applying fluorine directly to the teeth is satisfactory for each individual who receives the treatment, it is not a practical method because there are not enough dentists to effectively accomplish the task; that dental decay occurs at a rate six per cent faster than available dentists can repair it; that fluoridation in the manner proposed is not mass medication but is, in effect, prevention rather

than treatment; that chlorine is added to water to cut down bacterial contamination in order to reduce the occurrence of infectious disease, such as typhoid fever, and fluoride is added to prevent or deter the progress of a widespread dental disorder and thereby preserve the dental health of the people who consume the fluoridated water.

It is apparent from the foregoing resumé of the evidence that the question whether over-all harm or over all benefit will result to individuals who consume water containing the fluoride ion in a concentration of one part fluoride to one million gallons of water is highly controversial and that there is substantial evidence to support a conclusion either way. Our province, in the first instance, is to determine whether the ordinance in question bears a reasonable relation to public health and is thereby fairly referable to the county's police power. It appears to us that decisive of that determination is the fact that the record contains substantial evidence from which the county council reasonably could have found and concluded that dental decay is a widespread and serious disease affecting the dental health of all the people of St. Louis County; that a requirement that the fluoride content of the water consumed by St. Louis County residents be supplemented up to one part per million gallons would effectively and extensively decrease tooth decay, particularly in children, but with benefit to all; and that such a method would constitute a safe, practicable, relatively inexpensive, and efficacious public health measure.

We have no doubt, therefore, that the ordinance does bear a reasonable relation to public health and that its provisions are designed to and reasonably will tend to enhance the public health and, therefore, that the action of the St. Louis County Council, in enacting the ordinance in question, was an exercise of the power conferred by Section 192.300, supra.

We next consider whether the ordinance unduly invades or infringes rights guaranteed by the state and federal constitutions. Respondents contend that the ordinance is unconstitutional because it prohibits certain county residents from practicing their religious beliefs. That question is not before us for decision for the reasons which follow. There was no averment by plaintiffs in any pleading claiming any such violation, either directly or by inference. There was no averment that they or any of them are members or represent any members of a religious body or those who hold particular beliefs or practice their beliefs in a particular manner. Nor was there any such contention throughout the trial. There was no evidence offered or adduced pertaining to the tenets or practices of any particular religious body or group of people, nor was there evidence that members of any particular religious body resided in St. Louis County. There was no finding of fact or conclusion of law with respect to the contention now made and thus, of course, no part of the judgment was based upon any such finding or conclusion.

After the present appeal was pending in this court, leave was granted an attorney of the Missouri Bar to file a brief he ein as amicus curiae, on the averred ground, that the case was one which affected the interest and welfare of all the people of Missouri, including those residing in large metropolitan areas. The brief of amicus curiae contends, and that contention is specifically adopted by and included by reference as part of respondents' brief, that the ordinance in question is unconstitutional because it subjects Christian Scientists in St. Louis County to forced medication against their religious beliefs and thereby deprives them of their constitutional right under the First Amendment to the United States Constitution. It is suggested by inference that we may take judicial notice of the fact that it is a religious belief of Christian Scientists that no material applications for relief of dis-

case should be employed. But if, in the public interest, we should wish to resolve the question posed in amicus' brief, even though the constitutional question was not raised below nor preserved for appellate review, and even if we should take judicial notice that the belief suggested by counsel is a religious belief of Christian Scientists, still we should not know whether, nor could we assume that, it would violate that belief for one to consume water which theretofore had contained one-half part fluoride, simply because another one-half part had been added. Furthermore, if we should assume that the fluoride ion in water constitutes medication as to the individual and if we should further assume that the ingestion of that medication violates a religious belief of any county resident, then it must follow that forced medication now exists and that the enforcement of the ordinance in question would not change the situation in that respect. Be that as it may, however, the fact is that we may not on this record decide whether anyone's religious beliefs or anyone's freedom to practice his religious beliefs would be unduly and unlawfully infringed by the enforcement of the ordinance.

Respondents and amicus curiae state their specific contention with respect to the claimed violation of the Fourteenth Amendment to the United States Constitution and of Section 10 of Article I of the Missouri Constitution in this manner: The ordinance is unconstitutional and void because it deprives plaintiffs and other residents of St. Louis County of their liberty in that it denies them freedom of choice in matters relating to bodily care and health by compelling them to drink water containing "the poisonous drug fluoride ion" against their wills when not justified by "pressure of great dangers" to the public health.

Inasmuch as there is before us no question involving the violation of respondents' or others' freedom to believe and practice the tenets of their religious beliefs or involving the violation of any other First Amendment right, it

is apparent that in so far as the federal constitution is concerned we are here dealing with the due process clause of the Fourteenth Amendment as applied "for its own sake" and not with the due process clause as an instrument for transmitting any specific prohibition of the First Amendment. That is to say, we are not here dealing with a freedom which has been said to occupy a "preferred place * * * in our scheme," i. e., those "freedoms secured by the First Amendment." West Virginia Board of Education v. Barnette, 319 U. S. 624, 639; Thomas v. Collins, 323 U. S. 516, 529, 530.

Respondents point out that the "word 'liberty' contained in that amendment [Fourteenth] embraces not only the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his faculties as well." (Bracketed insert ours.) Grosjean v. American Press Co., 297 U. S. 233, 244. They concede that their freedom to choose whether to consume water containing the fluoride ion as a preventative to deter the decay of an individual's teeth is subject to regulation by law but contend that one's constitutionally protected freedom may be lawfully infringed only when such is necessary to insure the equal enjoyment of the same right or freedom by others or "under the pressures of great dangers." They rely upon language contained in the memorandum opinion of the trial chancellor who, in turn, stated those "tests" on the authority of Jacobson v. Massachusetts, 197 U. S. 11. In that case the court upheld the validity of a state compulsory vaccination law. It is true that the court at one place in its opinion quoted this from another case (197 U. S. 26, 27): " 'The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according

to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law.'" And at another place in the opinion (197 U. S. 29) the court, in pointing out that it was "the duty of the constituted authorities primarily to keep in view the welfare, comfort and safety of the many, and not permit the interests of the many to be subordinated to the wishes or convenience of the few," pointed out further that to conserve the safety of members of society, "the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand." But the court in the Jacobson case in the course of its opinion also said: "If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution. * * *

"Whatever may be thought of the expediency of this statute, it cannot be affirmed to be, beyond question, in palpable conflict with the Constitution." 197 U. S. 31.

In our view the Jacobson case does not support the proposition that individual freedom of choice pertaining to a matter affecting the public health, such as the freedom of choice here asserted, may be validly restricted or infringed only where the restraint imposed is necessary in order to insure equal enjoyment of the same freedom by others or under the "pressure of great dangers"; nor does that case stand for the proposition that only when

necessary to protect the individual as well as the members of the general public from the danger of a communicable or contagious disease may a legislative body validly enact an ordinance interfering with the freedom of choice of the individual as to a matter affecting the public health.

The United States Supreme Court has made it clear that even in cases involving First Amendment prohibitions which occupy an exalted and preferred position in our scheme of things it will not indiscriminately apply the "clear and present danger" test stated in Schenck v. United States, 249 U. S. 47. That court adopted the interpretation of that phrase suggested by Chief Judge Learned Hand. In Dennis v. United States, 341 U. S. 494, 510, the court, speaking of the phrase "clear and present danger," said: "Chief Judge Learned Hand, writing for the majority below, interpreted the phrase as follows: 'In each case [courts] must ask whether the gravity of the "evil," discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.' 183 F. 2d at 212. We adopt this statement of the rule. As articulated by Chief Judge Hand, it is as succinct and inclusive as any other we might devise at this time. It takes into consideration those factors which we deem relevant, and relates their significances. More we cannot expect from words." And see Baer v. City of Bend, Ore., 292 P. 2d 134, 139, 140, where the Oregon Supreme Court in a well-reasoned opinion held that the effect of the fluoridation of a public water supply did not infringe the consumer's constitutional guarantee of religious liberty.

It seems to us that the language of the court in West Coast Hotel Company v. Parrish, 300 U. S. 379, is apropos in determining whether the due process clause of the Fourteenth Amendment has been violated under the facts here. There the court, in dealing with the question whether there had been a deprivation of freedom to contract by the enact-

ment of a minimum wage regulation for women, said at page 391: "What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, **and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.**" (Our emphasis.)

Missouri cases hold that Article I, Section 10 of our Constitution ("That no person shall be deprived of life, liberty or property without due process of law") is not violated by an ordinance which, as we have held the one in question to be, is fairly referable to the police power of the enacting body and which is shown to have been enacted for the protection and enhancement of the public health and general welfare of the inhabitants of the area in question, unless its provisions are unreasonable and the burden is upon the one asserting the ordinance's invalidity to overcome the legal presumption of validity which attends the ordinance. Passler v. Johnson, Mo., 304 S. W. 2d 903, 908 [3-7].

Respondents' evidence tended to show that the ingestion of any amount of fluoride ion is harmful, that consuming water which contains any amount of the fluoride ion constitutes medication, and that there is no difference between the fluoride ion existing in the Missouri River water as it is now distributed by the Water Company and the inorganic fluoride ion which would be placed in the water under the ordinance requirement. Thus it is clear that

this freedom of choice which respondents assert is not the freedom to choose not to ingest any fluoride (they say, medication) because they are now consuming and, apparently, irrespective of the ordinance, will continue to drink water containing one-half part fluoride to each million gallons. Thus, the freedom of which respondents speak can be only the freedom to choose not to ingest more fluoride (more medication) than they are now consuming by drinking water which contains an additional one-half part fluoride to each million gallons of water. It is true that respondents' evidence tended to show that the greater amount of fluoride in the water the greater the harm to the individual consuming it, so, admittedly, from respondents' standpoint, there is involved some "freedom of choice" but it is of the nature indicated.

We are not concerned with the expediency of the ordinance or with the wisdom of the council's action in enacting it. We again recognize that we are bound by the council's reasonable determination that the measure will result in benefit to each individual consumer and not in harm. We have held herein that the ordinance does bear a reasonable relation to public health and, based upon the council's conclusions, does tend to enhance the health of the residents of the county. Consequently, it appears that for us to hold the ordinance in question is in "palpable conflict" with the State or Federal Constitution we would need to find and rule that, although, as we have held, the ordinance bears a reasonable relation to public health and its enforcement would enhance the public health, nevertheless, the type and extent of the benefit accruing to each individual (prevention of dental decay) are such that each individual must be completely free to determine for himself whether he will accept the asserted benefit bestowed through the fluoridation of the public water supply, else his freedom of choice is unreasonably infringed. We correctly may not so hold. On the contrary, it seems to

us that the reasonably expectable and valuable benefit which the council determined would accrue to the community as a whole justifies the resulting infringement of the individual's freedom of choice. (We note, parenthetically, that we have assumed throughout that the enforcement of the ordinance would "compel" respondents and other residents to consume the fluoride ion. That is because we recognize that there is a very real compulsion for many from a practical standpoint when the only apparent ways to avoid drinking public water and thus to avoid consuming the additional fluoride probably are, for many, prohibitivgly expensive or unduly burdensome. The fact remains, however, that in considering the matter of undue or unreasonable infringement, it is well to recognize that the ordinance does not specifically require any individual water consumer to do anything.)

We are supported in our conclusion as to the ordinance by the opinions from each of eight appellate courts which have considered the questions involved in the fluoridation of public water supplies. It is true that there are distinguishing features in those cases. In some were fact stipulations which eliminated certain questions. In one of them, the Iowa case, the sole question was the power of a city to enact such an ordinance. On the whole, however, the opinions in the following cases are authority for the conclusion we have reached: Baer v. City of Bend, supra; Kaul v. City of Chehalis, Wash., 277 P. 2d 352; Kraus v. City of Cleveland, Ohio, 127 N. E. 2d 609; Dowell v. City of Tulsa, Okla., 273 P. 2d 859; De Aryan v. Butler, Cal. App., 260 P. 2d 98; Froncek v. City of Milwaukee, Wis., 69 N. W. 2d 242; Chapman v. City of Shreveport, La., 74 So. 2d 142; Wilson v. City of Council Bluffs, Iowa, 110 N. W. 2d 569.

Taking into account and consideration the relevant facts and circumstances, as we see them, we are of the view that we may not confidently say that the enforcement of

the ordinance in question would result in an undue or unreasonable infringement of respondents' protected freedom of choice under the due process clause of either the State or Federal Constitution.

Respondents contend also that the fact that their evidence indicated that there were other and, in their opinion, better ways to apply the fluoride ion to the teeth obviated the necessity for the fluoridation of the public water supply and thereby caused the ordinance to "broadly stifle fundamental personal liberties when the end can be more narrowly achieved." Shelton v. Tucker, 364 U. S. 479, 488. While, as we have pointed out heretofore, respondents did adduce evidence that fluorine could be applied to the teeth either topically or by dissolving tablets in individual water supplies, there was other evidence from which the council reasonably could have reached the conclusion that such methods would not effectively accomplish the purpose of the ordinance, that is, to benefit all by partially freeing each from the ravages of dental decay. It is suggested also that the ordinance benefits only a particular class, i. e., children up to 14 years, and it is contended that the ordinance is unconstitutional for that reason. While it is true the ordinance in question must be in the interest of the public generally as distinguished from the interest of a particular class, the evidence was such as justified the council in determining that the consumption of fluoridated water would benefit people of all ages. There was direct testimony to that effect and, of course, it is apparent that children become adults. Clearly, the council was justified in finding that the ordinance was in the interest of the county's entire population and not solely in the interest of a particular class.

Respondents contend further that the ordinance is in conflict with and violates Sections 196.125-196.145, R. S. Mo. 1959, and V. A. M. S. The cited sections define a nonalcoholic drink and then provide that such nonalcoholic

drinks shall not be adulterated or misbranded and prescribe a penalty for any violation. Respondents contend that water is a nonalcoholic drink and, inasmuch as Section 196.135, supra, provides that a nonalcoholic drink is adulterated when it contains any fluorides or fluorine compounds, the sections in question would be violated by the enforcement of an ordinance requiring the addition of a fluoride to water. We are of the view that respondents' contention in that respect is untenable. Section 196.125, 12 V. A. M. S., defines a nonalcoholic drink in these words: "the term 'nonalcoholic drink,' as used herein, shall include carbonated beverages of all flavors, sarsaparilla, ginger ale, soda water of all flavors, lemonade, orangeade, root beer, grape juice, and all other nonintoxicating drinks." It is clear enough to us that the legislature did not intend to include water within the expression "all other nonintoxicating drinks." Clearly, we think the legislature intended by that language to include other drinks popularly referred to as "soft drinks" which were not specifically named but which were of the general kind and nature as those listed. We so hold. See Dowell v. Tulsa, supra, 273 P. 2d 864 [11, 12]; Froncek v. Milwaukee, supra, 69 N. W. 2d 250, 251.

We are of the opinion that the ordinance in question is not invalid for any of the reasons urged, and it follows that the judgment is reversed and the case remanded with directions to enter a judgment in accordance with the views herein stated.

Cullen Coil, Commissioner.

Holman, C., Concurs.

Houser, C., Concurs.

Per Curiam: The foregoing opinion by Coil, C., is adopted as the opinion of the court.

All concur.

APPENDIX A-1.

Mandate and judgment and decree of the Supreme Court of Missouri, entered Dec. 11, 1961, in cause No. 48,453, reversing and remanding judgment of the Circuit Court of St. Louis County, Missouri, in Cause No. 230,189, with directions, filed in the Circuit Court of St. Louis County on January 25, 1962.

On the 11th day of December, 1961, the following proceedings were had and entered of record in said cause, to wit (caption omitted):

Now at this day come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of St. Louis County rendered, be reversed, annulled and for naught held and esteemed, and that the said appellants be restored to all things which they have lost by reason of the said judgment. It is further considered and adjudged by the court that the said cause be remanded to the said Circuit Court of St. Louis County for further proceedings to be had therein, in conformity with the opinion of this court herein delivered; and that the said appellants recover against the said respondents costs and charges herein expended, and have execution therefor. (Opinion filed.)

APPENDIX B.

Opinion of the Circuit Court of St. Louis County, Missouri, including findings of fact and conclusions of law, and judgment, entered on July 5, 1960, in Cause No. 230,189.

State of Missouri,
County of St. Louis. } ss.

In the Circuit Court of the County of St. Louis,
State of Missouri.

Dagmar Readey et al.,
Plaintiffs,

vs.

St. Louis County Water Company et al.,
Defendants.

Cause
No. 230,189
Division No. 5

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Said cause having heretofore been tried by the Court, and the Court now having thoroughly investigated the many decisions rendered by various courts concerning the question in issue, to-wit: fluoridation, and now being fully advised under the premises, and having been requested to render in writing its findings of fact and conclusions of law as provided by the Revised Statutes of Missouri, the Court states as follows:

1. Although much evidence was adduced by both sides as to the advisability of fluoridating water the Court is of the opinion that it is of no consequence or importance whether he personally approves or disapproves of fluoridation, but is of the opinion that the only questions to be determined by this Court are those of a purely legal and constitutional origin, and so will be dealt with only from that standpoint.

2. Plaintiffs are citizens of the State of Missouri, some of whom reside in unincorporated areas and others in incorporated municipalities situated in St. Louis County, and as citizens and taxpayers of the County of St. Louis, State of Missouri, are likewise consumers of water distributed by the St. Louis County Water Company, and they have brought suit against the defendants by way of an injunction to restrain the said defendants from carrying out provisions of Ordinance 01480, which plaintiffs contend is both illegal and unconstitutional.

3. Defendants were originally the members of the County Council, the County Clerk and the Acting Health Commissioner of St. Louis County as well as the St. Louis County Water Company. However, on motion of the defendant, St. Louis County Water Company, to dismiss the petition as it applied to said Water Company, submitted to the Court at the close of plaintiff's case, said Court sustained said motion and the St. Louis County Water Company was dismissed as a party defendant to said cause of action.

4. Plaintiffs have attacked the legality of Ordinance 01480, which purports to direct the St. Louis County Water Company to introduce fluoride ion into the public water supply of St. Louis County in such quantities as are required to maintain throughout the pipe distribution system a fluoride concentration of approximately one part fluoride per million parts of water for the following reasons:

a) that the said ordinance is in violation of Article III, Section 22, of the Charter of St. Louis County and Article VI, Section 18 (c), of the Missouri Constitution,

b) that said ordinance is contrary to and in violation of Article I, Section 2 and Section 10, of the Missouri State Constitution in that it does not "promote the general welfare of the people," and that it further deprives plaintiffs of "life, liberty and property without due process of law,"

c) that the said ordinance likewise is in violation of the Fourteenth Amendment of the Constitution of the United States, Section 1, which is known in the vernacular as the due process of law section,

d) that said ordinance is in conflict with and militates against Section 386.250, paragraph 7, of the Revised Statutes of Missouri, 1949, which defines the jurisdiction of the Public Service Commission as to its powers and duties,

e) plaintiffs further attack said ordinance as being illegal and unconstitutional for many and various reasons which the Court will not take up at this time.

Findings.

Although this was a lengthy trial, which included much evidence adduced by both parties on this controversial subject of fluoridation as to the pros and cons of said project, suffice it to say that it can be concluded:

First, that the purpose for introducing fluorides in drinking water is to deter tooth decay; that said tooth decay known as "dental caries" is a very common disease of mankind but is neither infectious nor contagious; that the addition of said fluoride in the water supply is intended solely for use in prevention of tooth decay primarily in children up to fourteen years of age; that although fluoride is a deadly poison used commercially for the extermination of rats and other vermin, the addition to the water supply of a source of fluoride ion in the proportion of one part per million will not amount to a contamination of said water supply and perhaps it will still be as under the charter "clear potable water suitable for human consumption"; that fluoride has no effect upon the water or upon the plant life in the water but remains free and is artificially added solely for the effect it has on the individual drinking the water; that plaintiffs will be compelled to drink the water because there is no other

practical source of supply other than from the St. Louis County Water Company.

Second, that fluorides are readily available by prescription for topical application to teeth and for use in milk, water and salts.

Third, while dental caries may be termed a "disease which is prevalent in the teeth of almost everyone it is not contagious nor communicable in any way and in no way endangers the public health in the sense that its existence in the teeth of one individual might adversely affect the personal health of any other individual.

Fourth, that the use of the St. Louis County Water System as a means of accomplishing this purpose (adding a percentage of fluoride to the water to prevent dental caries in children under the age of fourteen) means that the persons drinking said water will receive said "treatment" for dental caries and such "treatment" would become "compulsory" for any person who has to rely upon the St. Louis County Water Company supply as his source of drinking water.

Fifth, that plaintiffs, being consumers of water distributed by the St. Louis County Water Company, will be compelled to drink the water containing fluoride because there is no other practical source of supply other than from the St. Louis County Water Company.

Conclusions of Law.

The Court, in the absence of any legal memorandums having been presented to it construing the legal questions involved, has diligently searched the decisions in attempting to rule correctly upon the legal and constitutional questions involved, and, as the subject of fluoridation of public water supplies has been brought before the higher tribunals of many of our sister states, a review of these

cases and the facts involved in each was mandatory before the Court could come to any conclusion. Many of the cases construing the constitutionality of fluoridation have been upheld against a variety of attacks by water consumers. The majority opinions in these cases sustain the right of municipalities to adopt such, reasonable and undiscriminating measures to improve their water supplies as are believed necessary to protect and improve the public health even in cases in which no epidemic is imminent and no contagious disease or virus is directly involved. The opinions also hold that the municipality may, as stated previously, order fluoridation of its **public water supply** and justify same as a public health measure even though it would be of no benefit to older persons but only aid in preventing tooth decay in persons under fourteen years of age; the reasoning being that it is readily seen that the children and youth of today are the adult citizens of tomorrow, and, therefore, that segment of the population unquestionably benefited by the drinking of fluoridated water (those children under the age of fourteen) would in a few years comprise a very large percentage of the population and it would therefore follow that the reduction of the incidence of tooth decay in children would also benefit their parents. These opinions also appear to gloss over the argument as made by plaintiffs in the case at bar that such fluoridation would be forced medication or medical treatment forbidden by the tenets of certain churches or religious sects, and consequently an ordinance such as the one before this Court, to-wit: Ordinance No. 01480, violated the right of free exercise of religion. Again, these courts have held against an attack on the constitutionality of said ordinances that they are valid in all respects as an exercise of the police power and as they are not arbitrary or unreasonable they do not invade the rights secured the individual by fundamental law. A recent California decision held that there could

be no judicial review of the advisability of the council's determination to fluoridate its water supply when it appeared of record that the city council had passed a resolution on fluoridation and prior to doing so had held a hearing and considered the various contentions made regarding the advisability of fluoridation and that, as in the present case, the council had the jurisdiction to act and make a determination, and in the absence of showing an unreasonableness or abuse of discretion there could be no judicial review of the advisability as made by the council. Likewise the decisions of our sister states appear almost unanimously to dispense with the arguments as made by plaintiffs in the case at bar concerning the illegality of said ordinance in that the council was ordering a poison to be put in the water; a forced medication to the population; that the fluoridation would not promote the general welfare of the people, and therefore this Court will not further concern itself with these arguments made by plaintiffs and will dismiss said allegations and will no longer discuss this part of plaintiffs' contention.

In all of this Court's investigation and review of cases it has not been able to find any case which is on all fours with the facts in this case and, therefore, the decisions rendered in the many cases considered by the Court would not be exactly in point. Here, as alleged by plaintiffs, we have a County Council acting under a charter form of government which has passed an ordinance attempting to regulate the distribution of water and to fluoridate same not only in the unincorporated areas where the Council no doubt has jurisdiction, but also in those municipalities which are separate entities and wherein the Council of said St. Louis County does not have any jurisdiction under its charter. Neither has this Court been able to find a case wherein a municipality has attempted to order a **privately owned** water company to fluoridate its water supply when the statutes of the state, as here, are set up

by the legislature giving the Public Service Commission of said state the jurisdiction over all water companies and the power to prescribe rules and regulations as well as defining specifically by said rules and regulations what said water companies may or may not add to their water distribution system (Laws of Missouri, 1949, Public Service Commission, Sections 393.130, 140 as well as Sections 386.240, 250, 310).

Evidence adduced at the trial of this cause proved conclusively that some of the plaintiffs reside in incorporated municipalities which are not governed or controlled by the County Council of St. Louis County under the charter form of government in said county, but as taxpayers of not only their incorporated municipality, to-wit: Ladue, Richmond Heights and Webster Groves, but also as taxpayers and residents of the County of St. Louis, obtain their water supply from the same St. Louis County Water Company, which under contract, as adduced by the evidence, supplies water to these as well as many other incorporated municipalities in addition to the unincorporated areas of St. Louis County, which it is admitted are governed by the County Council under the charter of St. Louis County adopted pursuant to the Statutes of Missouri. The Court, therefore, holds that said ordinance 01480 is unconstitutional and void in that said ordinance attempts to order a privately owned company to fluoridate its entire water system when some of the users of said water, and specifically plaintiffs being residents and taxpayers in incorporated areas have had no opportunity to vote upon the measure of fluoridation, such an order being in direct violation of Article VI, Section 18 (c) of the Missouri Constitution which provides as follows:

> "Provisions authorized in County charters—Participation by county in government of other local units. —The charter may provide for the vesting and exer-

cise of legislative power pertaining to public health, police and traffic, building construction, and planning and zoning, in the part of the county outside incorporated cities; and **it may provide, or authorize** its **governing body** to **provide**, the terms upon which the county **shall perform any of the services** and **functions** of **any municipality, or political subdivision** in the **county**, except school districts, **when accepted by vote of a majority of the qualified electors voting thereon in the municipality or subdivision, which acceptance may be revoked by like vote.**"

The evidence in this case clearly showed that some of the plaintiffs living in Webster Groves, Richmond Heights and Ladue did not have an opportunity to vote upon the question of fluoridation and said reading of paragraph 7 of the aforesaid Section 18 (c) clearly requires a vote of the majority of the qualified electors thereon in municipalities or subdivisions prior to a county (charter form of government—St. Louis County) performing any of the services and functions of any municipality.

Likewise, said ordinance is in violation of Article III, Section 22 of the charter of St. Louis County, which provides the manner in which the County shall perform any of the services and functions of any municipality and requires an acceptance by a vote of a majority of the qualified electors voting thereon in said incorporated municipality. This Article III of St. Louis County's charter was enacted pursuant to and in conformity with the aforesaid Article VI, Section 18 (c) of the Missouri Constitution and the Court therefore holds that said ordinance deprives plaintiffs of "life, liberty and property without due process of law", and is in violation of the Fourteenth Amendment of the Constitution of the United States and is therefore void and unconstitutional.

By this holding the Court has discounted the arguments made by counsel in many of the cases upholding the right

to fluoridate wherein those judges have held that there is not a violation of the Fourteenth Amendment in that the ordinance does not subject plaintiffs to any penalty nor does it compel plaintiffs to do anything. However, this Court believes and so holds that the plaintiffs would be "compelled" to drink the water because there is, as stated before, no other practical source of supply, and by having paid for water they would actually be receiving "treated water" and would be "compelled" to take the treatment as it is their only source of drinking water, and of necessity by drinking the water which they have been paying for and using, they, plaintiffs, would be **compelled to consume fluoridated or treated water.** The liberty, therefore, that plaintiffs are deprived of might be said to be that decision that they should be free to make as to whether they desire to apply fluorine to their teeth for the purpose of preventing tooth decay or not.

Jurists have upheld similar ordinances on the grounds that same is a valid exercise of, as here, the County's police powers and/or under the general welfare clause of the statutes. However, the courts must also recognize that the rights of the police power are correlative with the inherent individual rights or as stated by the Fourteenth Amendment of the Constitution of the United States, the right secured to each individual, the right to life and liberty that neither the state nor the County Council under the charter form of government may infringe upon or deprive an individual of these rights. Naturally, liberty can and should be regulated by law but an exercise of police power which deprives an individual of any of these rights must conform to due process. As here in the case of fluoridation, the right, as asserted by the County Council, is in protecting and promoting the public health against dental caries, but on the other hand we must protect the right of the individual, the right to liberty. Any regulation or measure directly affecting the

person in his bodily liberty or integrity represents the most incisive exercise of the police power. This Court adopts the reasoning of Mr. Justice Harlan of the United States Supreme Court when he stated in Jacobson v. Massachusetts, 197 U. S. 11,

> "Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint **under conditions essential** to the **equal enjoyment** of the **same right by others.** It is, then, liberty regulated by law. There is, of course, a sphere in which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, **under the pressure of great dangers,** be subjected to such restraint, to be enforced by **reasonable** regulations, as the safety of the **general** public may demand" (emphasis supplied).

Now, can it be said that the "fluoridation ordinance", being an infringement of the individual's constitutional right of freedom of choice in matters relating to his own bodily care and health is justified by "conditions essential to the equal enjoyment of the same right by others" or can it be justified by "pressure of great dangers" to the public health?

Evidence adduced at the trial termed "dental caries" a "disease" and as such is prevalent in the teeth of almost everyone but is not contagious or communicable in any way. It was further concluded under the evidence that dental caries in no way endangers the public health in

the sense that its existence in the teeth of one individual might adversely affect the personal health of any other individual.

In discussing public health Mr. Justice Hill, in Kaul v. City of Chehalis, 277 P. 2nd 352, l. c. 359, stated,

> "To thus extend the concept of 'public health' would open the door to compulsory mass medication or preventive treatment for any disease, solely on the ground that it is for the individual's own good; without regard to his inherent right to determine such matters for himself."

Medication to the lay individual would include prophylaxis or preventive measures when applied to the individual. Defendants under their evidence contend that fluoridation is not medication in that it does not cure anything but merely prevents dental caries. Aren't we delving into semantics? Defendants would readily admit that an ordinance requiring every resident or child under fourteen years of age to present himself or herself for topical application of fluorides by public health authorities would be unconstitutional. However, is the fluoridation ordinance, under attack by plaintiffs, any different? If the children under the age of fourteen could not be compelled to present themselves one by one to the health authorities for such topical application of fluorides, how could the County Council by the ordinance in question indirectly force the residents of this County to do "en masse" what the Council could not compel each individual to do—submit himself for individual treatment? If as Justice Hill states, the protection of dental health is an object for which the police power may be legitimately invoked and fluoridation would reasonably promote such object, nevertheless the courts should go further to determine whether such a proposed regulation attempts to achieve this object by "compulsory treatment" and

consequently would be an invasion of bodily liberty prohibited by the Fourteenth Amendment of the Constitution of the United States. If fluorine is the key to dental health and, as the evidence shows fluorides are readily available to all who desire them, it appears that through proper education and persuasion the people would accept the application of fluorides and would not have to be compelled to be subjected "en masse" to fluorides. Again the "pressure of great dangers", that Justice Harlan referred to as being present when the rights of an individual must be subjected to the safety of its members by reasonable regulation and restraint as the safety of the general public might demand, is just not present and it can't be found under the evidence submitted to this Court. The ordinance, therefore, is invalid and unconstitutional as an unwarranted and unjustified invasion of the liberty as guaranteed plaintiffs and others under Section I of the Fourteenth Amendment of the United States Constitution.

If the Court needed any further authority to justify its conclusion it can be found in the very recent case of John Carson et al. v. Joe Oxenhandler et al., 334 S. W. 2nd 394, decided by the St. Louis Court of Appeals on April 19, 1960. The Court in discussing the facts stated that said case was a sequel to that of Schmoll v. Housing Authority of St. Louis County, Missouri, 321 S. W. 2nd 494, decided by the Supreme Court of Missouri wherein the Court held, "because of the explicit provision of the charter of St. Louis County, requiring the County Council to enter into a cooperation agreement only by an ordinance, an agreement entered into with the Housing Authority of St. Louis County under a resolution of the County Council was invalid." The trial court, in Carson v. Oxenhandler (supra), held that the ordinance enacted by the St. Louis County Council following the direction of the Supreme Court in the Schmoll case, was valid as an administrative

or ministerial duty; however, the St. Louis Court of Appeals stated (page 23 of their opinion), "while there are decisions to the contrary, as the cases cited from other states have shown, we are of the opinion that the right of the people of a city or county to express their wishes on an undertaking of this nature should not be denied by a too-restrictive interpretation of the character of the ordinance under consideration," and held the ordinance under question to be one of legislation and, therefore, subject to the right of referendum, whereas if it was administrative or ministerial ordinance it would not have been subject to referendum.

The Court, therefore, declares Ordinance 01480, known as the fluoridation ordinance, to be void and of no effect for the aforesaid reasons and enjoins defendants from carrying out any of the provisions of said ordinance.

/s/ Douglas L. C. Jones,
Douglas L. C. Jones,
Judge.

APPENDIX C.

Order of the Supreme Court of Missouri in Cause No. 48,453 Overruling the Motion for Rehearing, etc., made and entered January 8, 1962.

And thereafter, and on the 8th day of January, 1962, the following further proceedings were had and entered of record in said cause; to-wit:

Dagmar Readey et al.,

Respondents,

48,453. vs.

St. Louis County Water Company, a Corporation et al.,

Appellants.

Now at this day, the Court having seen and fully considered the motion of the respondents for a rehearing in the above entitled cause or, in the alternative, for a transfer of said cause to the Court en Banc, doth order that said motion be, and the same is hereby overruled.

APPENDIX D

Ordinance No. 01480, of the Ordinances of the County Council of St. Louis County, Missouri, reads as follows:

"An Ordinance

"Authorizing and Directing the Introduction of Fluorides Into the Public Water Supply System Which Serves St. Louis County, Missouri, and Providing for the Regulation of Fluoridation.

"Whereas, it is the consensus with scientific, medical and dental opinion, that the presence of fluorides in drinking water is a deterrent to tooth decay; and

Whereas, an adequate concentration of such chemical is not found in the natural supply of water distributed to the citizens of St. Louis County; and

Whereas, the fluoridation of drinking water has been endorsed by the United States Public Health Service, Missouri Division of Health, the St. Louis County Health Department, the American Public Health Association, the St. Louis County Dental Association, the St. Louis County Medical Society, the American Water Works Association, and various local civic groups and organizations; and

Whereas, fluorides can be introduced into the drinking water supply of St. Louis County as a measure to promote the public health and welfare;

Now, Therefore:

Be It Ordained by the County Council of St. Louis County, Missouri, as Follows:

Section 1. St. Louis County Water Company is hereby authorized and directed to provide the means and to proceed with the introduction of the fluoride

ion into the public water supply of St. Louis County in such quantities as are required to maintain throughout the pipe distribution system of fluoride concentration of approximately one part fluoride per million parts of water.

Section 2. The St. Louis County Water Company shall keep an accurate record of the amount of fluorine bearing chemical applied, the quantities of water treated and cause such analytical tests to be made for fluorides (in terms of the element F) in the untreated and treated water as it shall be directed to do by the St. Louis County Health Department.

Section 3. The St. Louis County Health Commissioner is hereby directed to make periodic reports to the County Council on the fluoridation of the water supply and to seek the cooperation of education and scientific institutions, to conduct surveys and research as to the beneficial effect of the program and project on the citizens of St. Louis County.

Section 4. The County Clerk is herby directed upon the enactment of this ordinance to make available for distribution to the public, at his office, printed copies of this ordinance and to publish this ordinance in some newspaper in the County in three successive weeks, the last publication to be not later than thirty days after the enactment hereof.

Section 5. This ordinance shall become effective forty (40) days after its enactment.

Adopted May 27, 1959.

Thomas C. Dunne,
Chairman, County Council."

APPENDIX E.

Section 1 of the Fourteenth Amendment of the Constitution of the United States:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX F.

Article VI, Section 18 (c) of the Constitution of Missouri:

"**Provisions authorized in County charters—Participation by county in government of other local units.—** The charter may provide for the vesting and exercise of legislative power pertaining to public health, police and traffic, building construction, and planning and zoning, in the part of the county outside incorporated cities; and it may provide, or authorize its governing body to provide, the terms upon which the county shall perform any of the services and functions of any municipality, or political subdivision in the county, except school districts, when accepted by vote of a majority of the qualified electors voting thereon in the municipality or subdivision, which acceptance may be revoked by like vote."

APPENDIX G.

Home Rule Charter for St. Louis County, Mo., Art. III, Sec. 22 (subsections 19, 20 and 24):

"(19) To provide the terms upon which the County shall perform any of the services and functions of any municipality or political subdivision in the County, except school districts, when accepted by a vote of a majority of the qualified electors voting thereon in such municipality or subdivision, which acceptance may be revoked by a like vote; and to cooperate and contract with the municipalities or political subdivisions in the County as otherwise authorized by this charter and by law;

"(20) To exercise legislative power pertaining to public health, police and traffic, building construction, and planning and zoning, in the part of the County outside incorporated cities, and on such other subjects as may hereafter be authorized by the Constitution or by law, provided that, until superseded by ordinances of the Council, the laws pertaining to said matters shall continue to be valid and effective;

"(24) To exercise all powers of legislation now or hereafter conferred upon counties by the Constitution, law and this charter, and to determine and make provision for any matter of County government not otherwise provided herein, including any matter involved in the transition to the form of government provided by this charter."

APPENDIX H.

42 U. S. C. A., Sec. 1983. Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

APPENDIX I

"**Sec. 196.125, R. S. Mo. 1959. Definition of 'nonalcoholic drink'.**—That the term 'nonalcoholic drink', as used herein, shall include carbonated beverages of all flavors, sarsparilla, ginger ale, soda water of all flavors, lemonade, orangeade, root beer, grape juice, and all other nonintoxicating drinks."

"**Sec. 196.135, R. S. Mo. 1959. Nonalcoholic drink adulterated, when.**—A nonalcoholic drink shall be deemed to be adulterated within the meaning of sections 196.125 to 196.145, if it contains any added boric acid or borates, salicylic acid or salicylates, formaldehyde, sulphurous acid or sulphides, hydrofluoric acid or fluorides, fluoborates, fluosilicates, or other fluorine compounds, dulcin, glucin, betanaphthol, hydronaphthol, abrastrol, asaprol, oxides of nitrogen, nitrous acid or nitrates, compounds of copper, pyroligneous acid, or other added substance deleterious to health."

"**Sec. 196.145, R. S. Mo. 1959. Penalty.**—Any person who shall violate any of the provisions of sections 196.125 to 196.145 shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five dollars, nor more than one hundred dollars, or not more than six months in jail, or both."

APPENDIX J.

"**Sec. 192.300, R. S. Mo. 1959.—Class one counties may make additional health rules—record and publication—violation a misdemeanor.**—The county courts of the several counties of class one are hereby empowered and permitted to make and promulgate such rules, regulations or ordinances as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county; provided such rules, regulations and ordinances shall not be in conflict with any rules or regulations authorized and made by the division of health in accordance with this chapter. After the promulgation and adoption of such rules, regulations or ordinances by such county court, such court shall make and enter an order of record declaring such rules, regulations or ordinances to be printed and available for distribution to the public in the office of the county clerk, and require a copy of such order to be published in some newspaper in the county in three successive weeks, not later than thirty days after the entry of such order. Any person, firm, corporation or association violating any of the rules, regulations or ordinances adopted, promulgated and published by such county court shall be deemed to be guilty of a misdemeanor and prosecuted, tried and fined as otherwise provided by law. The county court of any such county is hereby given full power and authority to instigate the prosecution of any action under this section."

APPENDIX K.

"**Sec. 386.250, R. S. Mo. 1959. Jurisdiction of commission.**—The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

• • •

(7) To all water corporations, and to the land, property, dams, water supplies, or power stations thereof and the operation of same within this state; provided, that nothing contained in this section shall be construed as conferring jurisdiction upon the public service commission over the service or rates of any municipally owned water plant or system in any city of this state, except where such service or rates are for water to be furnished or used beyond the corporate limits of such municipality;

• • •

(9) To all public utility corporations and persons whatsoever subject to the provisions of this chapter as herein defined. And to such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly."